



**California  
Fair Political  
Practices Commission**

**SUPERSEDED**  
by 18702.1(2)(4)

March 31, 1987

Furman B. Roberts  
City Attorney  
City of Orange  
300 East Chapman Avenue  
Orange, CA 92666

Re: Your Request for Advice  
Our File No. I-87-044

Dear Mr. Roberts:

You have requested advice on behalf of City of Orange Planning Commissioner Randy Bosch concerning his duties under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter does not involve a specific pending decision. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

QUESTION

May Mr. Bosch participate in decisions on various land use permit applications involving land owned by the Irvine Company in newly annexed areas and in developing areas within the sphere of influence of the City of Orange?

CONCLUSION

Mr. Bosch must disqualify himself whenever the Irvine Company appears before the planning commission if his pro rata share of the income received by his firm from the Irvine Company equals or exceeds \$250 in the preceding 12 months. Assuming that he has received \$250 or more in income, Mr. Bosch also may not participate in any decision which will have a

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the Irvine Company. This determination must be made on a decision-by-decision basis.

#### FACTS

Planning Commissioner Bosch is employed by Dan L. Rowland and Associates, Inc. ("Rowland"), an architectural firm. Mr. Bosch also owns 16% of the firm's common stock.

Rowland is currently under contract with the Irvine Company to provide architectural engineering services for one project, the Santiago Hills Police and Fire Facility. The Irvine Company is required to provide those services under a contract with the City of Orange. The contract requires the Irvine Company to construct this facility for the City. City staff participated in designing the facility and in selecting Rowland as the architect for the facility.

Rowland and Mr. Bosch have had no previous business dealings with the Irvine Company. They do not anticipate having any future business with the company, except to complete the police and fire facility. Rowland currently is working for the Irvine Company on a time and material basis pending final execution of the contract.

In his role as planning commissioner, Mr. Bosch will be asked to consider and vote upon a number of land use permit applications filed by the Irvine Company, including general plan amendments, zoning changes, conditional use permits and variances on undeveloped land owned by the Irvine Company. The company is a very large one, owning thousands of acres of undeveloped land. Most of the land within the current sphere of influence of the City of Orange is owned by the company.

Rowland will receive in excess of \$250 in income from the Irvine Company during the next 12 months. It is also expected that the planning commission will be faced with a number of permit applications involving the Irvine Company during that time. These applications will involve undeveloped land; they will not involve the 230-acre parcel on which the police and fire facility is being constructed. Permits for that parcel were approved before Mr. Bosch was appointed to the planning commission.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a

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financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more....

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Government Code Section  
87103(a), (c) and (d).

In the present situation, Mr. Bosch may not participate in any decision which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on (1) him or a member of his immediate family, (2) Rowland, or (3) any person who has been a source of income to him of \$250 or more in the 12 months preceding the decision.<sup>3/</sup> Since Mr. Bosch owns 16 percent of the stock in Rowland, 16 percent of its income is attributed to him. (Section 82030.) Accordingly, any person who provides \$1,563 or more in income to Rowland will be considered a source of income of \$250 or more to Mr. Bosch.<sup>4/</sup>

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<sup>3/</sup> "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

<sup>4/</sup> "Income" means gross income rather than net income or profits. (Section 82030(a); Carey Opinion, 3 FPPC Ops. 99 (No. 76-087, Nov. 3, 1977), copy enclosed.)

Mr. Bosch must disqualify himself if it is reasonably foreseeable that a particular decision will have a material financial effect, distinguishable from its effect on the public generally, on him or a member of his immediate family. (Section 87103.) If it is reasonably foreseeable that the personal expenses, income, assets or liabilities of the official or his immediate family will be increased or decreased by at least \$250 by a particular decision, the effect of the decision is material and the official must disqualify himself. (Regulation 18702.1(a)(4) (copy enclosed).) Thus, if any particular decision, including decisions involving the Irvine Company, might foreseeably increase Mr. Bosch's income by \$250 or more, he must disqualify himself.

Mr. Bosch must also consider Regulation 18702.1(a)(1) and (2), in which the Commission has established further guidelines for disqualification. Under Regulation 18702.1(a)(1), a public official may not participate in a decision if a person or business entity which has been a source of income of \$250 or more in the preceding 12 months appears before the official in connection with a particular decision. Under Regulation 18702.1(a)(2), an official may not participate if a business entity which employs him appears before him in connection with a decision. Under these provisions, Mr. Bosch must disqualify himself if Rowland, which employs him, appears before him in connection with a decision. He must also disqualify himself if Irvine Company appears before him in connection with a decision after having provided him with \$250 or more in income within the preceding 12 months. A business entity "appears" before a public official when that entity, either personally or by an agent, initiates the proceeding in which the decision will be made by filing an application, claim, appeal or similar request, or is a named party in a proceeding such as a contract. Thus, if the Irvine Company has provided Mr. Bosch with \$250 or more in income within the preceding 12 months, he must disqualify himself from participating in decisions involving applications filed by the Irvine Company or involving the company as a named party.<sup>5/</sup>

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<sup>5/</sup> The disqualification requirements contained in Regulation 18702.1(a)(1) and (2) apply unless one of the exemptions listed in Regulation 18702.1(c) applies. The exemptions that may be available to Mr. Bosch in some cases are contained in Regulation 18702.1(c)(1) and (3). The former applies if the effect of the decision on the official, his family member, his source of income or his employer "will not be distinguishable from its effect on the public generally." The latter applies if "the decision will have no financial effect on the person or business entity who appears before the official."

If Mr. Bosch has received \$250 or more in income from the Irvine Company within the preceding 12 months, he would also be required to disqualify himself from participating in any decision which will have a reasonably foreseeable material financial effect on the company even if the company does not appear before him. Disqualification would be required even if Mr. Bosch would not personally benefit from the transaction. For disqualification to be required, the decision's effect must be reasonably foreseeable, material, and distinguishable from the effect on the public generally. Each of these elements is discussed below in order to assist you in analyzing specific future decisions.

### Foreseeability

An effect on an official's economic interests is foreseeable when there is a substantial likelihood that it will ultimately occur as a result of a governmental decision. An effect does not have to be certain to be reasonably foreseeable; however, if an effect is a mere possibility, it is not foreseeable. (See, Thorner Opinion, 1 FPFC Opinions 198 (No. 75-089, Dec. 4, 1975), copy enclosed.)

### Materiality

Whether an effect on a business entity in which an official has an investment, or which is a source of income to an official, will be considered material depends on the financial size of the business entity. (Regulation 18702.2.) For example, an effect of only \$10,000 on the gross revenues or assets of a small business is material. (Regulation 18702.2(g).) However, in the case of a Fortune 500 company, the effect would need to be at least a \$1 million effect on the company's gross revenues or assets for it to be material (Regulation 18702.2(c).)

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. (Regulation 18702(a).) For example, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision. (Regulation 18702(b)(3)(B).)

### Public Generally

A determination must be made as to whether the effect of the decision on the official's economic interest will be distinguishable from the effect on the public generally. Regulation 18703 provides that a material financial effect of a governmental decision on an

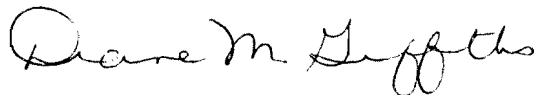
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Furman B. Roberts  
March 31, 1987  
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official's economic interest is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. For example, a decision by a city council to increase the sales tax, which will affect all residents of the city, does not affect any individual city councilmember in a different manner than it affects the public generally. As a result, it does not create a conflict of interest for any city councilmember. By way of contrast, a decision concerning a zoning variance for an official's business or home, which has a different effect on the official's economic interest than on other members of the general public, may constitute a conflict of interest for the official.

We would be pleased to provide you with more specific guidance regarding specific decisions which come before the planning commission as they arise. If you have any questions, you may reach me at (916) 322-5901.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:km

FEB 3 8 27 AM '87

# city of orange



incorporated 1888

orange civic center • 300 east chapman avenue • orange, california 92666  
post office box 449

city attorney  
(714) 532-0351

January 29, 1987

Diane Griffiths, General Counsel  
Fair Political Practices Commission  
428 "J" Street  
Sacramento, CA 95814

Re: Randy D. Bosch, AIA, recently appointed to the  
Planning Commission of the City of Orange

Dear Ms. Griffiths:

Pursuant to our telephone conversation of January 28, 1987, I herewith submit additional information necessary to request an opinion as to whether there exists any conflict of interest within the meaning of §§ 87100 et seq of the California Government Code should the City's most recent appointee to the City of Orange Planning Commission, Mr. Randy Bosch, vote on discretionary land use permits, including general plan amendments, zoning changes, conditional use permits or variances on land owned by the Irvine Company in newly annexed and developing areas on the eastern edge of the City and within the approved Sphere of Influence of the City.

As I indicated to you in our telephone conversation, I am authorized by Mr. Bosch to request information concerning whether there exists any such a conflict of interest. As the most recent appointee, Mr. Randy D. Bosch, AIA, residing at 6437 E. Yosemite Avenue, Orange, California, 92667, is employed by Dan L. Rowland and Associates, Inc., an architectural firm.

Pursuant to your request, I have conferred with Mr. Bosch and he informs me that his relationship to the Dan L. Rowland Architectural Firm is as follows:

Dan L. Rowland & Assoc., Inc., is a California corporation. Mr. Bosch holds 16% of the common stock and he is an employee of the corporation.

Attached hereto is a copy of a letter sent to the Orange City Council by Mr. Bosch and dated January 14, 1987. In the second paragraph of this letter, Mr. Bosch describes the nature of the contract of his architectural firm with the Irvine Company. As you can see there are really two contracts

Re: Randy D. Bosch, AIA  
January 29, 1987  
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concerning the development of police and fire substation facilities which are being designed by Mr. Bosch's architectural firm. The first contract is between the City of Orange and the Irvine Company requiring the Irvine Company to provide a fire and police facility substation site at an agreed upon location in accordance with standards of design and development supplied by the City. The second, and separate, contract exists between the Irvine Company and the architectural firm to provide the architectural services.

The Irvine Company-Architectural Firm contract is now pending final execution, but the firm is now working for the Irvine Company on the project and on a time and material basis. The firm has yet to receive its first compensation from the Irvine Company. Probably the first payment to the firm will occur in February or March of 1987.

As Mr. Bosch further explains in the fourth paragraph of his letter, neither his employer nor he have had any previous business relationships with the Irvine Company and they have no current anticipation or indication of any future business relationship with that company other than the completion of this one project.

Inasmuch as Mr. Bosch has now become a member of the Planning Commission of the City of Orange he will be asked to consider and vote upon a number of discretionary land use permits filed by the Irvine Company such as general plan amendments, zone changes, conditional use permits, and variances on undeveloped land that is owned by the Irvine Company. As you may know the Irvine Company is a very large company in the County of Orange, and owns literally thousands of acres of land presently undeveloped. Most of the land within the City of Orange's approved sphere of influence as approved by the Local Agency Formation Commission is owned by the Irvine Company.

I have conferred with Mr. Bosch and he informs me that the income which his employer, the architectural firm, will receive from the Irvine Company will exceed \$250.00 during the coming 12 month period. During this coming 12 month period the Planning Commission of the City of Orange, of which Mr. Bosch is a member, can be expected to be presented with, and will act upon, a number of discretionary land use permits which are anticipated will be filed by the Irvine Company or its agents, on this undeveloped land within the City's approved sphere of influence. This undeveloped land on which discretionary land use permits will be filed by the Irvine Company is to be distinguished from the 230 acres on which the substations are now



Re: Randy D. Bosch, AIA  
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being constructed. This 230 acre parcel has already received City approval of all discretionary land use permits prior to the appointment of Mr. Bosch.

I have attempted to supply you with all of the information which you requested. In the event I have overlooked some essential items of information or if you need further information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Furman B. Roberts". The signature is written in dark ink and is positioned above the typed name and title.

Furman B. Roberts  
City Attorney

FBR:dg

cc: Randy Bosch

January 14, 1987

Orange City Council  
c/o City Manager  
300 East Chapman Avenue  
Orange, California

Subject: Clarification of Relationship with The Irvine Company  
Re: Request for Consideration for Appointment to Planning  
Commission (December 7, 1986)

Dear Mayor and Council Members:

At your request, I am pleased to submit this letter as a clarification of qualifications for service on the City of Orange Planning Commission relative to my past, current and anticipated relationship with The Irvine Company.

My employer, Dan L. Rowland and Associates, Incorporated, is currently under contract to the Irvine Company for provision of architectural engineering services for one project, the Santiago Hills Police and Fire Facility. The Irvine Company is required to provide those services under its agreement with the City of Orange to deliver the completed facility, instead of the City contracting separately for design services per standard practice in previously developed areas. City staff were a vital part of the architect selection process and of the design process.

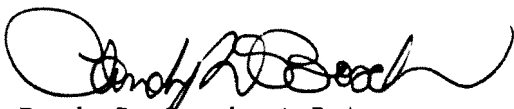
The project's required Conditional Use Permit, with the City and The Irvine Company as joint applicants, is scheduled for Planning Commission action at the Commission's January 19, 1987, meeting. After Commission action on the CUP, I anticipate no further involvement for that project before the Planning Commission.

My employer and I have had no previous business relationships with The Irvine Company, and have no current anticipation or indication of any future business relationship other than the completion of this one project for the City of Orange.

By virtue of strong personal belief and clear sense of duty, I adhere to a high standard of personal and professional ethics. If appointed to the Planning Commission, I can assure you of my careful and consistent adherence to the clear legal requirements governing potential conflict of interest regarding any business which may come before the Planning Commission.

Thank you for the opportunity to respond to your concerns in this matter, and for your careful consideration of my qualifications for this important position.

Very truly yours,



Randy D. Bosch, A.I.A.  
6437 East Yosemite Avenue  
Orange, California 92667



# California Fair Political Practices Commission

March 5, 1987

Furnam Roberts  
City Attorney  
P.O. Box 449  
Orange, CA 92666

Re: Your Request for Advice  
Our File No. 87-044

Dear Mr. Roberts:

This letter is to advise you that I have determined that good cause exists for an extension of time for responding to your request for advice under the Political Reform Act.<sup>1/</sup> Section 83114(b) requires the Commission to provide advice to a requestor within 21 working days of receipt of all the facts material to answering the request for advice. Section 83114(b) also provides that this time may be extended for good cause.

Commission advice letters provide certain immunities. Therefore, each advice letter must be given a careful and complete review before it is issued. As a result of a sudden and substantial increase in the volume of advice requests which arrived within a short period of time, the staff is unable to fully and fairly respond to all of those requests at the same time. In order to assure full consideration of your request, I have extended the time for our response by 14 working days. Our response will be mailed to you on or before that date.

If you anticipate significant problems as a result of this delay, please contact the Commission's General Counsel, Diane Griffiths at (916) 322-5901.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregory W. Baugher".

Gregory W. Baugher  
Executive Director

GWB:plh

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code.



# California Fair Political Practices Commission

February 5, 1987

Furman Roberts  
City Attorney  
P.O. Box 449  
Orange, CA 92666

Re: 87-044

Dear Mr. Roberts:

Your letter requesting advice under the Political Reform Act was received on February 3, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Randy Bosch